IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 170 of 2000
With
CIVIL APPLICATION NO.3625 OF 2000
In
SPECIAL CIVIL APPLICATION No 4358 of 2000
(Decided on 3.5.2000)
And
SPECIAL CIVIL APPLICATION No 4685 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA
and
Hon'ble MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ARVINDBHAI KESHAVLAL PATEL

Versus

HASMUKH SONI

Appearance:

1. LETTERS PATENT APPEAL No. 170 of 2000
MR HARIN P RAVAL for Appellant
MR RD RAVAL for Respondent No. 1
Ms.Harsha Devani, learned AGP for respondent No.2
DELETED for Respondent No. 3

2. Special Civil Application No 4685 of 2000
Mr.Harin P.Raval for petitioners
Ms.Harsha Devani, learned AGP for respondents

CORAM : MR.JUSTICE M.R.CALLA

and

MR.JUSTICE RAVI R.TRIPATHI

Date of decision:22/6/2001

CAV COMMON JUDGEMENT

(Per : MR.JUSTICE M.R.CALLA)

1. The present Appeal is filed against the order passed in Special Civil Application No.4358/2000 by the learned single Judge on 3.5.2000 whereby the petition was disposed of at admission stage with certain observations in favour of the petitioner Shri Hasmukh Soni in that Special Civil Application, who is respondent No.1 in the present Letters Patent Appeal.

2. At the first look, the order appears to be innocuous as if there is no justifiable cause for Appeal, but in view of the facts which are narrated hereinbelow it becomes clear that the said order was obtained by Shri Hasmukh Soni, the petitioner of Special Civil Application No.4358/2000 wherein the present appellant was though added as respondent No.2, no notice was issued to the respondents and the impugned order was invited by the petitioner without inviting the attention of the Court to the full facts and the relevant provisions.

3. The history of the case is chequered one. There is a body known as "Gujarat Board of Ayurvedic and Unani Systems of Medicines" (hereinafter referred to as "the Board"). The election of the Members of said body were held on 18.11.1997. As required under law the names of elected members of the Board were published in the Government Gazette Part II dated 4.12.1997, but, for the reasons best known to the Government, the Government did not take any steps to constitute the Board fully by nominating the four members as required under Section 3 of Gujarat Medical Practitioners Act, 1963.As the Government did not discharge its duty of constituting the Board fully by nominating four members, a petition being

Special Civil Application No.9973/99 came to be filed before this court (wherein the present appellant and four other elected members including Shri Hasmukh C.Vaidya were the petitioners) inter alia, praying for a writ of mandamus or any other appropriate writ, direction or order in the nature of mandamus directing the Government to appoint four members on the Board and for taking appropriate steps for holding election of the President of the said Board. The said petition was filed in the month of December, 1999. Initially, a notice was issued and, thereafter, as despite the notice and repeated opportunities having been granted to the Government no reply was filed, the court (Coram: M.R.Calla,J) passed an order on 22.3.2000 which reads as under:-

"Despite service of notice and repeated opportunities, no reply has been filed. Mr.A.J.Desai submits that no one has contacted him for filing the reply.

Rule. Mr. Desai waives service of rule. In the facts and circumstances of this case, this Special Civil Application is directed to be taken up for final disposal on 12th April, 2000. In case the reply is not filed, Mr. Desai shall keep the concerned Officer present along with the papers so that appropriate orders may be passed as the constitution of the Board of Ayurvedic and Unani Systems of Medicines is incomplete. On the next date, the learned AGP shall place on record the reasons as to why the Government is not making proper nominations on the Board and shall also advise the Government to consider as to whether such nominations can be made before the next date if they have not made so far. Put up on 12th April, 2000. Direct service is permitted."

4. During the pendency of the said Special Civil Application the Government had made the nominations on 10.4.2000.The said Special Civil Application No.9973/99, therefore, became infructuous and came to be disposed of by Judgement and order dated 3.5.2000 alongwith Civil Application No.3299/2000. It was observed by the Court that-

-- Once the nominations have been made, in the opinion of the Court the reasons for which the appointments were not made had lost significance.

-- At the time of disposal of the Special Civil Application No.9973/99 on 3.5.2000. Mr. P.M.Raval,

learned advocate appearing for the petitioners of that petition had raised certain grievance by filing Civil Application No.3299/2000 against the communication dated 29.4.2000. The said Civil Application was disposed of by observing that-

-- It is always open for the petitioner to challenge any orders which have been passed subsequently during the pendency of the petition. Since the challenge to this communication dated 29.4.2000 has nothing to do with the prayers made in the main petition, no useful purpose can be served by allowing the petitioner to amend the original petition, as it would change the very nature of the petition.

-- The Court reserved the liberty to the petitioners to challenge the subsequent orders by way of separate petition and the Special Civil Application was disposed of as having become infructuous and the Civil Application was disposed of accordingly.

5. It is important to note at this stage as to how did the things proceed on 29.4.2000, the date on which the meeting of the Board was convened for the election of the President of the Board. The meeting of the Board which was scheduled to be held on 29.4.2000 was held and the name of the present appellant was proposed by six members for the post of President of the Board and no other candidate was there in the contest and, therefore, the appellant was elected as unopposed President of the Board. However, in this meeting dt.29.4.2000 the four Government nominee Members of the Board (who were nominated on 10.4.2000) gave some application to the incharge-President one Binduben Gamit inter alia making allegations of irregularities in the election of members which were held in the year 1997, and curiously enough, said Binduben Gamit who presided over the meeting adjourned the said meeting to 2.5.2000 on the ground of making inquiry into the allegations made against the appellant during the course of election of Members held in November, 1997 and that the proceedings dated 29.4.2000 shall be made known on 2.5.2000. On this basis a communication dated 29.4.2000 was sent to the present appellant. It is this communication dated 29.4.2000 which was made the subject matter of Civil Application No.3299/2000 which was filed in the earlier Special Civil Application No.9973/99 and which was not entertained by this Court on the grounds mentioned in the order dated 3.5.2000 passed in Special Civil Application No.9973/99 and Civil Application No.3299/2000 therein.

6. The present appellant then filed a substantive petition being Special Civil Application No.4685/2000 on 5.5.2000 seeking a declaration that the petitioner had been elected as President in the meeting dated 29.4.2000 and postponement of the meeting to 2.5.2000 was illegal.

7. In the meantime on 2.5.2000 Special Civil Application No.4358/2000 was filed by Dr.Hasmukh Soni (one of the nominee member appointed by the Government) wherein the order dated 3.5.2000 impugned in this Letters Patent Appeal came to be passed without issuing any notice to any party. Against this impugned order dated 3.5.2000 (Coram: Hon'ble J.N.Bhatt,J) present Letters Patent Appeal No.170/2000 came to be filed during vacation on 10.5.2000. The contents of the impugned order dated 3.5.2000 are as under:-

"In this petition under Article 226 of the Constitution of India, the only grievance voiced is that several irregularities have been committed by the respondent no.2 and 3 during the election for the post of members of the Board and representation is made to inquire into such irregularities and no action has been taken. However, the learned advocate for the petitioner states that fresh representation will be made within a period of two days and it may be directed to be attended and adjudicated upon at the earliest, but not later than two days from the date of the receipt of the order.

Upon representation being made within two days to the respondent no.1, it will be examined and adjudicated upon within a period of two weeks from the date of receipt, thereof. In view of the aforesaid observation, no further order is required to be passed. In case of adverse order, it will be open for the petitioner to move the court. With the observation, this petition stands disposed of, at the admission state.

Direct service permitted."

The learned Vacation Judge while granting interim relief issued notice in the Letters Patent Appeal on 12.5.2000 making it returnable on 19.5.2000 and also issued notice in Special Civil Application No.4685/2000. This order dated 12.5.2000 has been recorded in the second set of Civil Application No.3625/2000 in Letters Patent Appeal No.170/2000 and the same is as under:-

"Notice returnable on 19.5.2000. Interim relief in terms of para 5(C). Direct service today."

On 19.5.2000 the matter was adjourned to 25.5.2000 and on 25.5.2000 an order came to be passed in Civil Application No.3625/2000 in Letters Patent Appeal No.170/2000 which reads as under:-

"I have already passed order regarding ad interim relief on 12.5.2000. Now the matter is adjourned to 14th June, 2000. Ad interim relief to continue upto 16th June, 2000. Spl.C.A.No.4685/2000 to be heard alongwith the LPA No.170/2000. D.S. permitted."

8. It is in view of this order dated 25.5.2000 that the said Special Civil Application No.4685/2000 is heard alongwith this Letters Patent Appeal. Learned advocate Mr. Raval contended that the Special Civil Application No.4685/2000 is required to be allowed and the reliefs sought for in the said petition are required to be granted. The said reliefs are as under:-

(A) That this Hon'ble Court will be pleased to declare the petitioner No.1 as elected President of Gujarat Board of Ayurvedic and Unani Systems of Medicines as having secured majority of the votes in the meeting dated 29th April, 2000 and that there was no contest for the same.

(B) That this Hon'ble Court will be pleased to quash and set aside the decision of the respondent No.1 postponing the meeting dated 29th April, 2000 vide communication dated 29th April, 2000.

(C) That this Hon'ble Court will be pleased to declare the action of the respondent No.1 in postponing the meeting as malafide, in law as well as in fact in postponing the meeting after the election of the President was over in the meeting dated 29th April,2000 till 2nd May, 2000.

9. Mr. Harin P. Raval contended that the aforesaid reliefs are required to be granted on the following grounds:

(i) The proceedings of the meeting called for the election of the President on 29.4.2000 were governed by the provisions of Rule 28 of the Gujarat Medical

Practitioners Rules, 1983 (hereinafter referred to as 'the Rules"). According to the provisions of relevant rules the members present shall elect from amongst themselves a temporary Chairman by ballot. Such Chairman is supposed to preside over the meeting until the "President" is elected. Mr. Raval submits that Sub-rule (2) provides that it shall be competent for any member of the Board to nominate another member for the office of the President and it is for the temporary Chairman to announce the names of members so nominated and if only one member is nominated, he is required to be declared to have been elected as President. As in the present case, one Sukhdevsinh Vansia was elected as temporary Chairman of the meeting but said Binduben Gamit, respondent No.1 in Special Civil Application No.4685/2000, asserted her right to preside over the meeting claiming to be the Incharge President. In the said meeting Shri Sukhdevsinh Vansia proposed to nominate the name of Dr. Arvindbhai K.Patel (who is the petitioner of Spl.C.A.No.4685/2000 and also the appellant in the present Appeal). The name of Dr.Arvind Patel was supported by Shri Ramesh Patel and four other members in writing and as there was no other candidate to contest the election of the President, Dr. Arvind Patel was elected as the President and the President of the meeting ought to have declared Dr. Arvind Patel as President of the Board. At that point of time, four members who were nominated by the Government gave some writing making allegations against Dr. Arvind Patel. The Government nominees were also able to secure defection of one of the elected member - Hasmukh Vaidya who was the petitioner No.1 in the Special Civil Application No.9973/99. Ms. Binduben Gamit acted on the said writing of the Government nominees and Hasmukh Vaidya and asked the Registrar of the Board to address a letter to Dr. Arvindbhai Patel postponing the meeting held on 29.4.2000 to 2.5.2000, intimating further that the decision in this behalf will be communicated on 2.5.2000. Mr. Raval submitted that the said action of Ms. Binduben Gamit is contrary to the provisions of law and is required to be quashed by this court.

(ii) Mr. Raval further submitted that the power to declare the election to be void in a given case vests in the Board and there is no authority in the so called Incharge President (respondent No.1 of Spl.C.A.No.4685/2000) to entertain any such objection to the election of Dr. Arvind Patel.

(iii) Mr. Raval submitted that as per the provisions of Rule 22 of the Rules, the dispute regarding the election could be raised within six months of declaration

of the result by the Returning Officer which in the present case was done on 18.11.1997. Therefore, there was no question of taking into consideration the writing alleging the irregularities in the election of said Shri Arvindbhai Patel as a member and that too after lapse of more than two years in the meeting dated 29.4.2000 when the election was held in November, 1997.

(iv) Mr. Raval submitted that in fact from the sequence of events it is clear that the entire action on the part of the respondent-authorities is vitiated being malafide in law. He vehemently submitted that though the elections were held in the month of November, 1997 the Government did not nominate the members to fully constitute the Board. It was only after Special Civil Application No.9973/99 came to be filed to direct the Government to nominate four member on the Board so as to see that the Board is properly constitute, the Government acted in the matter. Thereafter, in the month of April 2000 when the persons in power realised that Arvind Patel is stated to be elected as President of the Board they resorted to an act of making allegation and/or representation on 29.4.2000 for the first time alleging that certain irregularities were committed in his election as a member in 1997. It is surprising that said Ms. Binduben Gamit acted upon said representation and postponed the meeting to 2.5.2000 intimating that the decision thereof will be intimated on 2.5.2000. Mr. Raval reiterated the contentions raised in Para 14 of the Appeal Memo wherein it is stated that the authorities wanted to take control of the Board for which an attempt was made to stall and postpone the said meeting as it was apparent that the opposite camp supported by the present party in power was not likely to succeed in having its candidate being elected as President. It is unfortunate that the opposite camp was successful in persuading Shri Hasmukh Vaidya - the Petitioner No.1 of Special Civil Application No.9973/99 to support the Government nominees, but then also in the Board of 11 members the division was 6 to 5 i.e. six in favour of Shri Arvind Patel.

(v) Mr. Raval also contended that as set out in Para 16 of the Appeal Memo, in view of the provisions of Sub-section (5) of Section 5 of the Act, Dr. Arvind Patel was elected as President and there is no question of there being an appointment of Incharge President. He also contended that the appointment of Ms. Binduben Gamit as Incharge President was not challenged by the appellant and other members of his group under a mistake. Their group was in majority as having won all seven

seats. He also emphasised the fact that no reference or dispute regarding election of members elected in the election held in November, 1997 was ever raised or presented either to the Board or to the Government as contemplated. He also emphasised that it is clear from the provisions of Rule 22 wherein the provision is made to keep the custody of ballot papers for a period of six months. He emphatically contended that in view of the specific provision of Rule 22 whereby the voting papers are required to be destroyed after six months and it is clear that no such dispute could be raised as contemplated under the provisions beyond a period of six months.

10. On behalf of respondents it was argued that even if under Rule 22 the voting papers are required to be destroyed after six months of the date of election and even if it is admitted that election of the members were held on 17.11.97, any Government Nominee could still raise the dispute about the validity of the election of members held in 1997 and that the Incharge President could take note of such an objection about the election of members held in 1997 even in April 2000 so as to frustrate the election of President on 29.4.2000 and such representation had to be considered.

11. We have heard learned counsel for both the sides in the Letters Patent Appeal No.170/2000 as also in Special Civil Application No.4685/2000 and have gone through the pleadings therein and the orders passed in these proceedings. We have also gone through the pleadings contained in Special Civil Application No.4358/2000 in which the order dated 3.5.2000, impugned in Letters Patent Appeal No.170/2000, was passed. With regrets not less than surprise we find that in the entire petition (4358/2000) no where the petitioner Dr.Hasmukh Soni has disclosed as to when the election of members were held. The entire petition (4358/2000) is conspicuously silent about the election of Members to the Board, when the elections for Members were held and a prayer was made that the respondent be restrained from holding the election of the President of the Board till the conclusion of free, just, fair and legal inquiry into the allegations levelled by the petitioner of Special Civil Application No.4358/2000 against Arvindbhai Patel and Bhailalbhai Patel, respondents therein. It is a matter of further shock and surprise that before the Court on 3.5.2000 the grievance was voiced that several irregularities had been committed by the respondent Arvindbhai Patel and Bhailalbhai Patel during the election of the Members of the Board and that the

representation to inquire into such irregularities had been made, but no action had been taken and thereafter it was stated by the learned counsel for the petitioner i.e. Dr.Hasmukh Soni that a fresh representation will be made within a period of 2 days and that the same may be directed to be attended and adjudicated upon at the earliest, but not later than 2 days from the date of the receipt of the order. In these circumstances, the Court had ordered that upon representation being made within 2 days to the respondent No.1 i.e. State of Gujarat, it will be examined and adjudicated upon within a period of 2 weeks from the date of the receipt thereof and that in case of adverse order, it will be open for the petitioner to move the Court and with this observation the petition was disposed of at admission stage. We find that it was a clear cut case in which the petitioner concealed and suppressed the material fact that such election of members had been held way back in 1997 and the petitioner i.e. the respondent in this Letters Patent Appeal obtained impugned order dated 3.5.2000 by suppressing and concealing the material fact from the Court at admission stage and at the back of the respondents of that petition and without any notice to them. It was a plane and simple abuse of the process of the court to thwart the result of the election dt.29.4.2000 for the post of the President and we find that the petitioner in Special Civil Application No.4358/2000 had approached the Court under Article 226 of the Constitution of India without correct and complete disclosure of the relevant and material facts and touched the pure fountains of justice with his soiled and tainted hands. Had the correct and complete disclosure of the facts been made that the election of the members had been held way back in 1997, the learned single Judge may not have even entertained the request for deciding any such representation made on 29.4.2000 or to be made afresh.

In fact the election of members was held on 17.11.97,the result was declared on 18.11.97, which was published in the Government Gazette on 4.12.97 and yet Government nominees were not appointed and it is only after the filing of Special Civil Application No.9973/99 seeking a direction against the Government for appointing its nominees on the Board so as to complete the constitution of the Board, that such nominations were made on 10.4.2000. Thereafter, when the meeting was held on 29.4.2000 for election of the President and in the said meeting when it became clear that the present appellant Dr. Arvindbhai Patel is uncontested for the post of President, an effort was made to see that what cannot be done in a direct manner is done in an indirect

manner and, therefore, the representation was made by the nominees and such representation was acted upon in an uncalled for and unwarranted manner by the so called Incharge President. While the election of Members as were held in 1997 had already attained finality, to thwart the election of Dr. Arvindbhai Patel as the President, the so called Incharge President adjourned the meeting to 2.5.2000 and immediately thereafter the process of the Court was also sought to be abused and the Special Civil Application No.4358/2000 was filed for a relief that the Government be restrained from holding the election of the President of the Board till the conclusion of the free, just, fair and legal inquiry into the allegations levelled by the petitioner of the Special Civil Application No.4358/2000 against the respondents of that petition. It is this strategic and calculated move which precipitated the filing of the Special Civil Application No.4685/2000 seeking relief that the petitioner in Special Civil Application No.4685/2000 Dr.Arvindbhai K.Patel be declared to have been elected as the President of the Gujarat Board of Ayurvedic and Unani Systems of Medicines and the decision of the respondent No.1 challenged in that Special Civil Application No.4685/2000 to postpone the meeting dated 29.4.2000 to 2.5.2000 after it became clear in the meeting that Dr.Arvindbhai K.Patel stands elected as uncontested candidate, be declared to be illegal and be set aside. In teeth of the factual position, as above, the impugned order dt.3.5.2000 cannot be sustained in the eye of law

12. The upshot of the aforesaid discussion is that-

(i) this Letters Patent Appeal succeeds and the same is allowed, the order dt. 3.5.2000 passed by the learned single Judge in Special Civil Application No.4358/2000 is hereby set aside and the Special Civil Application No.4358/2000 accordingly stands rejected. There will be no order as to costs.

Whereas the Letters Patent Appeal itself has been allowed, and the final relief has been granted, no further orders are required to be passed in this civil Application No.3625/2000 and the same stands disposed of accordingly. Notice in this Civil Application is hereby discharged. There shall be no order as to costs.

(ii) Special Civil Application No.4685/2000 succeeds and the same is allowed and the reliefs prayed for are granted and the authorities are directed to treat the petitioner Dr.Arvindbhai K.Patel to be uncontested elected President of Gujarat Board of Ayurvedic and Unani

Systems of Medicines on 29.4.2000 and the decision of Respondent No.1 so as to postpone the meeting dt. 29.4.2000 to 2.5.2000 is declared to be illegal and the consequential communication dt.29.4.2000 Annexure "E" is also declared to be illegal and is hereby set aside. Rule is made absolute accordingly. There shall be no order as to costs.

(M.R.Calla,J)

(R.R.Tripathi,J)